

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY cy D.C.  
05 JUL 11 PM 4:47

RICKY BENSON,

Plaintiff,

vs.

MARK LUTTRELL, et al.,

Defendants.

X  
X  
X  
X  
X  
X  
X  
X  
X  
X  
X

No. 04-2547-Ma/V

THOMAS M. GOULD  
CLERK, U.S. DISTRICT COURT  
W.D. OF TN. MEMPHIS

ORDER ASSESSING APPELLATE FILING FEE

On June 17, 2005, Plaintiff Ricky Benson, filed a notice of appeal from this Court's order of dismissal and judgment entered September 3, 2004. Benson was formerly incarcerated at the Shelby County Correctional Center (SCCC) and the Shelby County Criminal Justice Center (Jail). He has notified the Clerk that he is no longer incarcerated and his new address is 1555 Rayburn St., Memphis, TN 38106. Plaintiff was notified by letter from the Sixth Circuit Court of Appeals that he must file the documents required by The Prison Litigation Reform Act of 1995, (PLRA), Title VIII of Pub.L. 104-134, 110 Stat. 1321 (April 26, 1996), which amended the in forma pauperis statute, 28 U.S.C. § 1915 or pay the entire \$255 appellate filing fee.<sup>1</sup> However, the PLRA and its installment


<sup>1</sup> The Sixth Circuit is apparently unaware that Benson has been released. The letter was mailed to Benson's prison address.

provisions do not apply to a complaint once the plaintiff is released from prison.

Benson did not file a motion to proceed in forma pauperis on appeal. The Court's order of dismissal certified pursuant to 28 U.S.C. § 1915(a)(3) that any appeal in this matter by plaintiff is not taken in good faith and plaintiff may not proceed on appeal in forma pauperis. The Court reaffirms that certification and reiterates that plaintiff may not proceed in forma pauperis on appeal.

The plaintiff must pay the entire \$255 filing fee required by 28 U.S.C. §§ 1913 and 1917. The entire filing fee must be paid within thirty days of the entry of this order. See McGore v. Wrigglesworth, 114 F.3d 601 (6th Cir. 1997); Floyd v. United States Postal Service, 105 F.3d 274 (6th Cir. 1997). If the plaintiff fails to pay the appellate filing fee within thirty days<sup>2</sup> of the entry of this order, the district court will notify the Sixth Circuit, which will dismiss the appeal. If the appeal is dismissed, it will not be reinstated once the fee is paid. McGore, 114 F.3d at 610.

IT IS SO ORDERED this 11<sup>th</sup> day of July, 2005.

  
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SAMUEL H. MAYS, JR.  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> The district court may extend this deadline one time by thirty days if the motion to extend is filed within the meaning of Fed. R. App. P. 4(a)(5)(C) before the expiration of the original deadline. McGore, 114 F.3d at 610.



## Notice of Distribution

This notice confirms a copy of the document docketed as number 12 in case 2:04-CV-02547 was distributed by fax, mail, or direct printing on July 12, 2005 to the parties listed.

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Ricky Benson  
204821  
1555 Rayburn St.  
Memphis, TN 38106

Honorable Samuel Mays  
US DISTRICT COURT